

["Herbert" or "appellant"] at trial. For the reasons set forth below, the Court will deny Attorney Dollison's motion. Attorney Dollison shall remain as Herbert's appointed counsel for the duration of his appeal.

I. FACTUAL AND PROCEDURAL BACKGROUND

The attorneys involved in this appeal have wasted great time and effort passing it around like a hot potato in attempts to avoid responsibility for handling it. Each of the attorneys involved was at one time or another a partner or associate at Stryker, Duensing, Casner & Dollison or some previous incarnation thereof [the "firm"].¹ Although the genesis of this dispute over who is assigned to this appeal lies at the trial level, it is the more recent fifteen-month delay by Herbert's counsel in filing trial transcripts with the Appellate Division that has thrust this dispute to the fore. The Court therefore recites the pertinent history of the various attorneys' involvement in this case.

1. On August 10, 1995, Territorial Court Judge, Brenda J.

¹ Attorney Dollison was not a named partner at the firm when this case was originally assigned to attorneys at the firm. As a result, he alone cannot be held responsible for all the lapses that have led to the current situation. He is and remains Herbert's counsel during the most recent transgressions, however.

Hollar, appointed Attorney Rosalie Ballentine, then an associate at the firm, to represent Herbert in his defense at trial and "thereafter unless and until relieved by order of the District Court." (See Order in *Government v. Herbert*, Crim. No. F321/1995 (Terr. Ct. Aug. 10, 1995).)

2. On April 18, 1996, Judge Hollar appointed Attorney Kevin D'Amour, then a named partner at the firm, to assist Attorney Ballentine's representation of Herbert before the Territorial Court and "thereafter unless and until relieved by order of the District Court." (See Order in *Government v. Herbert*, Crim. No. F321/1995 (Terr. Ct. Apr. 18, 1996).)
3. On September 16, 1996, Presiding Judge, Verne A. Hodge, entered a judgment of conviction against appellant and noted that appellant was "represented by Attorneys Rosalie Simmonds Ballentine, Kevin F. D'Amour, and Erik P. Lindberg," all attorneys at the firm. (See Judgment in *Government v. Herbert*, Crim. No. F321/1995 (Terr. Ct. Sept. 16, 1996).)
4. On September 20, 1996, appellant filed his notice of appeal, signed by Attorney Erik P. Lindberg.
5. On January 13, 1997, this Court appointed Attorney Erik

Lindberg to represent the appellant in the Appellate Division of the District Court. (See Notice of Criminal Appointment (Jan. 13, 1997).)

6. In early 1997, Herbert filed two motions "through appointed undersigned counsel, D'Amour, Jones, Stryker, Duensing & Nichols," that were signed by Attorney Erik P. Lindberg. (See Motions (Jan. 24, 1997 & Feb. 14, 1997).)
6. On October 16, 1998, appellant filed a motion for extension of time, which noted that Attorney D'Amour was no longer with the firm and bore the signature of Matthew J. Duensing, a partner at the firm. (See Mot. Extension Time (Oct. 16, 1998).)
7. On March 10, 1999, appellant filed another motion for extension of time, stating that "this matter has since, through internal policies of the firm, been assigned to the undersigned." The motion was signed by Ishmael A. Meyers, Jr., on behalf of himself and Richard H. Dollison, whose names appeared printed below the signature. (See Mot. Extension Time (Mar. 10, 1999).)
8. On March 16, 1999, the government filed its opposition to the motion for extension of time, aptly noting that "counsel for appellant [has been given] more than

fifteen months to resolve internal personnel problems .
. . . ." (See Gov't Opp'n Mot. Extension Time (Mar. 16,
1999).)

9. On April 9, 1999, the firm moved to withdraw as
counsel. Attorney Rosalie Ballentine signed the motion
on behalf of herself and Attorney Ishmael A. Meyers,
Jr., whose names appeared printed below the signature.
(See Mot. Withdraw (Apr. 9, 1999).)
10. On November 19, 1999, the Appellate Division stayed the
motion to withdraw and ordered counsel to file copies
of the trial transcripts with this Court. (See Order
(Nov. 19, 1999) ["November 19, 1999, order"].²)
Pursuant to *Anders v. California*, 386 U.S. 738 (1967),

² The November 19, 1999, order states in relevant part:

WHEREAS counsel for appellant has filed a motion to withdraw
accompanied by supporting memorandum pursuant to *Anders v.*
California, 386 U.S. 738 (1967), arguing that there are no
appealable issues in this matter;

WHEREAS counsel for appellant has yet to serve on this Court
an appendix including the transcript of the trial court
proceedings;

WHEREAS counsel for appellant has yet to serve the appellant
with a copy of the brief and supporting memorandum and appendix;
and

WHEREAS this Court must fully examine the relevant portions
of the proceedings to determine whether the above-captioned appeal
is wholly frivolous, it is hereby

. . . .;

ORDERED that counsel for appellant serve on this Court seven
(7) copies of the appendix containing the transcripts of the trial
court proceedings; and it is further

ORDERED that counsel's motion to withdraw is **STAYED** pending
this Court's review and that counsel shall continue to represent
his client in all proceedings until further notice;

the Appellate Division was required to examine the relevant portions of the Territorial Court proceedings to determine whether the appeal was wholly frivolous before it could grant the motion to withdraw.³ (See November 19, 1999, order.)

11. On December 13, 1999, Attorney Jennifer Jones Rodriguez, an associate at the firm, sent a letter to Herbert informing him that, as a result of a recently-filed Anders brief, he "will not be represented by any attorney at the firm of Stryker, Duensing, Casner and Dollison, unless specifically appointed by the court." A copy of the letter was submitted as an exhibit attached to the firm's Response to Appellant's Response to Court Order, which Attorney Rosalie Ballentine signed on behalf of herself and Attorney Ishmael A. Meyers, Jr., whose names appeared printed below the signature. (See Resp. Appellant's Resp. Ct. Order and ex. A (Dec. 21, 1999).)
12. This appeal languished for more than a year as counsel for Herbert failed to file with the Appellate Division

³ For a recent treatment of the Appellate Division's duty to safeguard a criminal appellant's right to counsel until the appeal is shown to be wholly frivolous, see *Maddox v. Government of the Virgin Islands*, 121 F. Supp.2d 457 (D.V.I. App. Div. 2000), also available on the Court website at <http://www.vid.uscourts.gov/98cr241.pdf>.

the appendix containing the trial transcripts. On January 11, 2001, this Court ordered that counsel for Herbert comply with the November 19, 1999, order and file the appendix. The order was sent to the firm for the attention of Attorneys Rosalie Ballentine and Ishmael A. Meyers, Jr.

13. On January 18, 2001, the firm moved for an extension of time "to transfer the file to appropriate appointed counsel, Rosalie Ballentine." Again, the motion was signed by Attorney Jennifer Jones Rodriguez, and her name and that of Richard H. Dollison appeared printed in the signature area. (See Mot. Extension Time (Jan. 18, 2001).)
14. On January 22, 2001, Attorney Ballentine filed a response to the Court's order of January 11, 2001, averring that she disassociated herself from the firm on September 6, 1999, and urging that, since she took no part in filing the notice of appeal or any subsequent matters, that the "matter remain with the referenced firm." (See Resp. Ct. Order (Jan. 22, 2001).)
15. On January 29, 2001, this Court ordered that Richard H. Dollison be named attorney of record in this matter.

(See Order (Jan. 29, 2001).)

16. On February 7, 2001, Attorney Dollison filed the present motion under consideration by the Court, asking for reconsideration of the order naming him as counsel of record. (See Mot. Recons. (Feb. 7, 2001).)

Attorney Ballentine responded on February 15, 2001.

(See Resp. Mot. Recons. (Feb. 15, 2001).)

17. On February 16, 2001, Attorney Dollison finally complied with the November 19, 1999, order and filed with this Court the appendix containing the transcripts of the trial court proceedings.

II. DISCUSSION

Attorney Dollison's motion overlooks two significant points of history. First, Attorney Ballentine was effectively relieved of her appointment when this Court appointed Attorney Erik Lindberg as appellate counsel. Second, Attorney Meyers represented on behalf of the firm that Herbert's appeal had been reassigned within the firm from Attorney Lindberg to Attorneys Meyers and Dollison.

Attorneys Ballentine and D'Amour were effectively relieved as counsel by this Court's appointment on January 13, 1997, of Attorney Erik Lindberg, another attorney at the firm, to

represent the appellant before the Appellate Division. At some point, Attorney Lindberg no longer appeared and other attorneys at the firm, including Matthew J. Duensing, Ishmael A. Meyers, Jr., and Jennifer Jones Rodriguez, began to affix their signatures to various filings with the Court. Whether the firm had reassigned the case internally or whether these attorneys simply acted on Attorney Lindberg's behalf for the firm is unclear. Either way, these agents of the firm and of Lindberg first implicitly, and ultimately expressly, assumed his responsibilities and exercised authority for representing Herbert before this Court.⁴

Any lingering question about who was responsible for this case was resolved when appellant filed his March 10, 1999, motion for extension of time over the name of Richard H. Dollison and signed by Attorney Meyers, stating that "this matter has since, through internal policies of the firm, been assigned to the undersigned." The firm having thrown the "hot potato" to Mr. Dollison, the Court will require him to catch and hold onto it. Accordingly, Attorney Dollison's motion for reconsideration of

⁴ According to the Virgin Island Bar Association Directory of Attorneys (2000), Attorney Erik Lindberg no longer resides in the Virgin Islands and is currently on inactive status. Neither he nor his former law firm ever informed the Court that he no longer practiced law in the Virgin Islands and therefore could not continue to represent Herbert.

his appointment as counsel in this case will be denied.⁵

Although this resolves the matter of who represents Herbert, there remains the troubling question of how this matter fell through the cracks of Stryker, Duensing, Casner & Dollison for so long, (see Rules 1.3 and 1.16(c) of the ABA Model Rules of Professional Conduct), and why counsel avoided complying with this Court's November 19, 1999, order that "counsel shall continue to represent his client in all proceedings until further notice" and that counsel shall file transcripts with the Court. The abandonment of this case by Attorneys Lindberg and Meyers without requesting the Court's leave to withdraw is also troubling. All of these omissions share the commonality that each attorney involved is or was employed by the same firm. The government brought these lapses to the firm's attention in its March 16, 1999, filing, noting that the firm's "internal personnel problems" had caused a fifteen-month delay in the proceedings.

Accordingly, the Court will order that Attorney Dollison remain as counsel for Herbert and that such representation shall be *pro bono* in light of the aforementioned history. The firm will also be ordered to report on its personnel procedures and

⁵ In his motion, Attorney Dollison informs the Court that Attorney Meyers has left the private practice of law. Accordingly, only Attorney Dollison remains as counsel in this action.

checks or lack thereof which resulted in the undue delays and failures to comply with lawful court orders and on how in the future it will avoid such lapses in attention to their professional responsibility.

An appropriate order of even date follows.

ENTERED this 27th day of February, 2001.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By: ____/s/_____
Deputy Clerk

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
APPELLATE DIVISION

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Re: Terr. Ct. Crim. F321/95

AND NOW, this 27th day of February, 2001, for the reasons
set forth in the accompanying Opinion of even date, it is hereby

ORDERED that Attorney Richard H. Dollison shall be and remain the attorney of record in this matter and henceforth shall represent Steve Herbert on a *pro bono* basis; it is further

ORDERED that all other counsel are hereby explicitly relieved of their appointments in this matter; and it is further

ORDERED that the firm of Stryker, Duensing, Casner & Dollison submit to this Court within thirty days a brief report on its personnel procedures and checks involving appointed matters as well as a plan for preventing future lapses of the sort apparent in their handling of this appeal.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By:_____/s/_____
Deputy Clerk

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